



PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

First Named Inventor	: Paul J. CORNAY	Confirmation No:	7758
Appln. No.	: 09/828,296	Group Art Unit:	1723
Filed	: 4/6/2001	Examiner:	Charles E. Cooley
Title	: CONCENTRIC TUBULAR CENTRIFUGE		

Petition Under 37 C.F.R. § 1.78(a)(6) to Accept an Unintentionally Delayed Claim Under 35 U.S.C. § 119(e) for the Benefit of a Prior Filed Provisional Application

MAIL STOP PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is a petition to the Office to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of a prior filed provisional application, pursuant to 37 C.F.R. § 1.78(a)(6).

The Assignee originally filed a Petition under 37 C.F.R. § 1.78(a)(6) on July 19, 2004 (the "July petition"). The July petition was denied by the Examiner, who alleged: 1) the present application could not claim priority to United States Provisional Patent Application serial No. 60/028,556 (the "556 Provisional"), since it was filed more than one year after the filing date of the '556 Provisional; and 2) the July petition rendered the priority claim in the present application unclear by inadvertently dropping the claim to provisional applications serial nos. 60/215,499 and 60/195,686 (the "499 Provisional" and "686 Provisional," respectively). The Assignee files the instant petition to more explicitly set forth the chain of priority stretching back to the '556 Provisional. The Assignee also notes the July petition amended only the first paragraph of the specification, and did not amend or delete the second paragraph of the cross-reference to related applications. The second paragraph contained the claim of priority to the '499 and '686 Provisionals. Accordingly, the Assignee respectfully submits the July 19, 2004 petition neither waived nor rendered unclear the priority claim to these two provisionals.

The Assignee states the following in support of its contention that the present application is entitled to claim priority to the '556 Provisional. The current application, U.S. Patent Application Serial No. 09/828,296, is a continuation-in-part of U.S. Patent Application Serial No. 09/707,430 (hereinafter, "the '430 Application"), which is a continuation of U.S. Patent Application Serial No. 09/298,272 (hereinafter, "the '272 Application," now U.S. Pat. 6,142,924), which is a continuation of U.S. Patent Application Serial No. 08/950,377 (hereinafter, "the '377 Application," now U.S. Pat. 5,944,648).

The '430, '272, and '377 Applications all claim benefit of the '556 Provisional under 35 U.S.C. §119(e), either directly or indirectly. This fact was not indicated in the current application as originally filed. However, the indirect claim of benefit by the present application to the '556 Provisional, via the '430, '272, and '377 Applications, is indicated in the present version of the current application.

Further, currently and as originally filed, the current application claims benefit of the '499 and '686 Provisionals, as indicated in the accompanying Supplemental Amendment. The Assignee repeats this claim of priority in the accompanying Supplemental Amendment, in a separate paragraph as originally filed, to avoid any confusion similar to that created by the filing of the July petition.

Under 37 C.F.R. §1.78(a)(6), a petition to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of a prior-filed provisional application may be accepted during the pendency of the later-filed application if accompanied by: (1) the reference to priority; (2) the surcharge set forth in 37 C.F.R. §1.17(t) (\$1,370.00); and (3) a statement that the entire delay between the date the claim was due under 37 C.F.R. §1.78 (a)(5)(ii) and the date the claim was filed was unintentional.

In accordance with the first requirement described above, a Supplemental Amendment adding the claim of priority to the current application accompanies this Petition.

In accordance with the second requirement, a fee for \$1330.00 was previously submitted for a petition under 37 C.F.R. §1.78, filed July 19, 2004, and dismissed by the Office November 9, 2004. Accordingly, please apply the previously-paid \$1330.00 to the fee due for this Petition, and charge Deposit Account No. 04-1415 the amount of \$40.00 to cover the excess amount required for this Petition.

In accordance with the third requirement, the delay in claiming priority under 37 CFR §1.78 (a)(5)(ii) was entirely unintentional. The chain of provisional and non-provisional applications noted above establishes the basis in the current application for an indirect claim of priority to the '556 Provisional, though an explicit claim was omitted. Further, the Assignee prepared the July petition promptly after noticing the error, and prepared the instant petition promptly after denial of the July petition. Accordingly, the Assignee respectfully requests this petition be accepted under 37 C.F.R. §1.78(a)(6).